



493207

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

IN RE:)	IN PROCEEDINGS UNDER
)	CHAPTER 7
CHEMETCO, INC.,)	
)	BK 01-34066
Debtor(s).)	

MOTION TO ALLOCATE FUTURE TRUSTEE FEES

COMES NOW Laura K. Grandy, the Trustee in the above-referenced bankruptcy proceeding and for her Motion to Allocate Future Trustee Fees states as follows:

1. On November 13, 2001, Chemetco, Inc. ("Debtor") filed a voluntary Petition for Relief pursuant to Chapter 7 of the United States Bankruptcy Code. The Debtor was a secondary copper smelter which used low grade materials to produce high quality copper. The Debtor's facility was located in Hartford, Illinois and consisted of a 40 acre plant facility ("Plant Site"), adjacent farm ground and real estate located in South Roxana, Illinois. At the time of filing, the main plant contained several buildings which housed furnaces, inventory and supplies. Heavy equipment was located throughout the property. Over 1 million tons of slag, scrubber sludge and process by-products were piled in various locations on the Plant Site.

2. The Debtor had been under investigation by the Illinois Environmental Protection Agency and the United States Environmental Protection Agency for quite some time. Prior to the filing of the bankruptcy, a criminal judgment was entered against the Debtor and in favor of the Department of Justice for environmental violations. Subsequent to filing bankruptcy, the Illinois Environmental Protection Agency ("IEPA") issued a Seal Order closing the site. The Seal Order limited access to the facility to the Trustee and agents of the Trustee. Access for additional individuals was allowed upon special requests to the Illinois Environmental Protection Agency. The IEPA and United States Environmental Protection Agency ("USEPA") have filed claims in the Estate in excess of \$177,000,000.00 related to the cost to clean up the Plant Site.

3. The Debtor closed its plant operations on October 31, 2001. Between the time of closing and the filing of the bankruptcy on November 13, 2001, little was done to organize the documents of the Debtor, the equipment, inventory or the plant itself. The Trustee inherited a plant and an office that were in utter disarray.

4. The USEPA recently listed the site as a National Priority Superfund Site. At the time the Plant Site was closed, Chemetco left behind approximately 1 million tons of slag and 50,000 tons of scrubber sludge.

These materials contain lead and cadmium in addition to valuable metals. The challenge of the Estate has been to maintain these materials while trying to market and sell the Estate site. In the past, real estate developers had shown interest in the site but the slag and scrubber sludge materials were deterrents to the purchase.

5. On September 21, 2009, the United States Bankruptcy Court approved the sale of substantially all of the assets of the Estate to Industrial Asset Disposition ("Asset Sale"). The Asset Sale encompasses the ultimate transfer of the real estate, demolition of buildings coated in hazardous wastes and the processing of over 1 million tons of slag, scrubber sludge and/or metal by-products. The Asset Sale is expected to result in the Plant Site being substantially remediated while producing income to pay claims. The claims of the Illinois EPA and United States EPA total \$177 million dollars ("EPA Claims"). A portion of the EPA Claims is based on the estimated costs to clean the Plant Site, which amount substantially dilutes the distribution to unsecured creditors. The process being developed by IAD is expected to result in the sale and removal of over 1 million tons of slag, scrubber sludge and metal bearing by-products from the copper smelter operation (collectively "Metal By-Products"). The removal of the Metal By-Products will substantially reduce the claims of the IEPA and USEPA resulting in a more significant distribution to the unsecured creditors.

The Trustee has been responsible for the day-to-day maintenance and liquidation of the assets of Chemetco, Inc. The following functions were performed by the Trustee in the course of maintaining the Estate assets:

I. ASSETS:

A. Real Estate:

- (1) Plant Location - As a result of the Seal Order, the Trustee has continued to routinely deal with water and air issues related to the property. The Trustee retained three (3) former employees of Chemetco, Inc. to assist the Bankruptcy Estate in addressing the water issues so as to maintain compliance with all environmental requirements. Issues created by excessive rain or dust problems created by dry conditions have been routinely handled on behalf of the Bankruptcy Estate. Additional issues related to deterioration of plant buildings have also been monitored for safety reasons. The Trustee also retained a full time environmental expert to handle numerous compliance issues with the Illinois EPA related to the Plant Site.
- (2) Seal Order - The Trustee has continued to maintain compliance with the Seal Order so that areas which were considered high risk by the Environmental Protection Agency are contained. Continued environmental compliance is necessary to protect the numerous assets located on the Plant Site such as slag, zinc and other materials as well as protect the environment.
- (3) Farm Property - Adjacent to the Plant Site are approximately 140 acres of farm ground, a house and outbuildings which Chemetco, Inc. owned. The real estate had been acquired by Chemetco, Inc. to control the surrounding area and lessen

the likelihood of neighborhood complaints. The Trustee has leased the farm ground out and the Estate has earned \$103,235.02 in farm income since the filing of the bankruptcy. The Trustee listed all of the farm ground for sale and has been working with County and State officials to obtain incentives for potential buyers. Due to the proximity of this ground to the Plant location, real estate developers were not interested in acquiring the ground. The Farm Property was sold to IAD pursuant to the Asset Sale approved by the Court.

- (4) Real Estate Taxes - The Trustee protested the real estate taxes on the Plant Site. The Trustee appealed the taxes which were ultimately reduced from an assessed value of \$1,234,980.00 to \$385,020.00. The Trustee further appealed that decision and proposed a settlement to various taxing districts which was approved by this Court. As a result of the settlement, the Trustee has continued to pay the real estate taxes on the Farm Ground located adjacent to the site. The Trustee has not paid the real estate taxes on the Plant Site as a result of said settlement but will be required to pay the reduced real estate taxes upon consummation of the Asset Sale.
- (5) Security - At the time the bankruptcy was filed, Chemetco, Inc. had retained on-site security guards to monitor the facility. The cost of the security guards was approximately \$1,700.00 per week. The Trustee's staff secured the facility with a configuration of gates and installed a security/alarm system with high resolution cameras to substantially reduce the cost of security. This has resulted in a savings of approximately \$7,000.00 per month while at the same time keeping the facility safe. The facility has been the target of several copper thieves. The security/alarm system has been responsible for catching several of those thieves as well as keeping those who would otherwise enter the premises out. Employees continue to improve security by installing additional cameras.
- (6) Utilities - At the time the Bankruptcy Petition was filed, the utilities had been turned off at the Plant Site. Power was needed to operate pumps necessary for environmental protection measures as well as to provide light to the office facility. Chemetco, Inc. had an office facility consisting of approximately 15,000 square feet. The Trustee negotiated with both Union Electric and Illinois Power Company to obtain power to the facility while at the same time reducing the power usage.
- (7) L.C. Metals

Prior to the filing of the bankruptcy, Chemetco, Inc. had entered into a sale of certain real estate located in Granite City, Illinois, to L.C. Metals. L.C. Metals paid off the contract. Since the inception of this bankruptcy proceeding, the Trustee has collected a total of \$319,850.38 from the L.C. Metals sale.

B. Equipment

At the time the bankruptcy was filed, the Plant Site was filled with numerous pieces of heavy equipment used in the operation of the plant as well as tools and other equipment to process the metal. The Trustee arranged an auction of some of the equipment located on the site. The auction was held on July 18, 2002. The auction grossed \$495,439.00. The plant still contains equipment that was not sold at the auction. The Trustee has negotiated a sale of three (3) of the furnaces used to smelt the metals that produced copper, zinc and other metals at the site. The sale price of the furnaces is \$1,525,000.00. The Trustee has been coordinating with various subcontractors and the buyer for the removal of the furnaces. A work plan will need to be approved by the Illinois EPA prior to the removal of the furnaces. Additional parts and equipment related to the smelter

process were also sold to the buyer totaling \$230,523.40. The Trustee is working with her staff and the subcontractors to propose the work plan to remove the furnaces.

The Trustee sold the Cress Loaders located on site for the amount of \$200,000.00. The Trustee's plant staff had refurbished the equipment and the equipment was advertised for sale.

The Plant Site also contains additional equipment including two (2) bag houses, rolling equipment, cranes, and miscellaneous tools. The equipment was sold to Industrial Assets along with all other assets. The Estate will receive 80% of net revenues from further equipment sales.

C. Inventory

The Trustee has continued to sell scrap inventory from the plant. The Trustee sold scrap inventory in February of 2002 for the amount of \$1,006,000.00. The inventory was sold by means of an auction conducted in the Bankruptcy Court. Numerous buyers participated in the sale. Commerce Bank had a lien on the inventory along with several inventory suppliers who asserted reclamation claims. The Trustee filed a Complaint with the Bankruptcy Court to determine the priority of the reclamation claims. The Trustee negotiated the sale of cupro, pot slag and furnace cleanup dust. In order to complete the sales, the Trustee needed approval from the Illinois EPA. An Interim Order was negotiated with the Illinois EPA in a proceeding filed in the United States District Court by the Illinois EPA prior to the filing of the bankruptcy. An Application to Approve Settlement of the Interim Order was filed in August of 2008 and approved by the United States Bankruptcy Court. As a result of said Order, the Trustee sold approximately \$1,938,454.78 of cupro, pot slag and clean up dust.

The Trustee also sold copper anodes and black copper by auction in February 2002, for a net sales price of \$788,465.95. The Trustee has continued to sell inventory from time to time. To date, the total inventory sold amounts to \$4,105,269.83.

D. Slag/Zinc

By far the most significant asset on the Plant Site consists of slag, which totals approximately 1 million tons. The slag was a by-product of the copper smelter process. The slag contains copper, zinc, lead, cadmium, and other metals. Prior to filing bankruptcy, Chemetco, Inc. had recovered copper from a portion of the slag and ground the remaining slag material from the recovery process. The ground slag material was sold by Chemetco to be used in roofing shingles as well as pigment for ceramic tiles. Due to the value of copper and zinc in the metals markets over the past two years, the Trustee has had renewed interest in the possible sale of the slag. The Trustee negotiated in the past with the Illinois Environmental Protection Agency and the United States Environmental Protection Agency to sell the unprocessed slag material. The slag material was sold to IAD pursuant to the Asset Sale. It will be necessary for the Estate to negotiate a work plan and have that work plan approved as a final Order in the District Court action prior to processing. Industrial Asset Disposition will design, construct, and assist in the operation of a processing plant to recover the saleable material by-products located on the Chemetco site. The Trustee previously negotiated a contract with Metals Finance Corporation to process the material. Metals Finance Corporation terminated that contract due to the potential cost of operating the facility and issues related to the Illinois Environmental Protection Agency and United States Environmental Protection Agency. One goal of the IAD project is to clear the Plant Site of the by-products which would otherwise need to go to a hazardous landfill. The project will reduce the EPA Claims while generating net revenue for the Bankruptcy Estate.

Commerce Bank has a lien on the Metal By-Products. As a part of the Asset Sale, Commerce Bank agreed to reduce its secured claim to \$5,000,000.00.

E. Office Facility

The Chemetco, Inc. office facility located at the plant contains a significant amount of office equipment and furnishings. The equipment and furnishings are currently being used by the Trustee to house the documents needed for this Bankruptcy Estate. The sale to Industrial Asset Disposition included the office equipment and furnishings. The Estate negotiated the continual use of the office equipment and furnishings during the project with IAD as well as continued document storage.

F. Miscellaneous Scrap Metal

At the time the bankruptcy was filed, the Chemetco, Inc. site was littered with discarded equipment and inventory. The Trustee retained the services of a scrap metal processor to cut and sell the material. This netted the Bankruptcy Estate \$27,656.40. The buildings located on the site still contain a significant amount of scrap material. Many of the buildings have environmental problems which need to be addressed prior to the removal of the material. The scrap metal will be sold in conjunction with the demolition of the buildings by IAD.

G. Hartford Casualty Insurance Litigation

At the time the bankruptcy was filed, Chemetco, Inc. had filed a lawsuit against Hartford Casualty Insurance for improper processing of worker's compensation claims. The Trustee retained the law firm of Morris Chapman to pursue the litigation. The litigation was settled for \$2 million which was paid to the Bankruptcy Estate. Commerce Bank claimed to have a lien on the insurance settlement proceeds based upon a claim that it had all contract rights and general intangibles. The Trustee disputed the claim of Commerce Bank and the claim was ultimately settled by Commerce Bank receiving one-half (1/2) of the net proceeds after payment of all attorney's fees and costs of the Bankruptcy Estate. The Bankruptcy Estate netted \$634,364.84 from settlement.

H. Preference Litigation

The Trustee investigated various preferences and fraudulent conveyances ("Avoidance Actions") and retained counsel to pursue preference litigation. As of this date, the Bankruptcy Estate recovered \$3,024,353.79 from Avoidance Actions. The Trustee directed the filing of over two hundred (200) Avoidance Actions.

I. Miscellaneous Assets

The Trustee has also recovered numerous refunds, deposits, dividends, and structured payments totaling approximately \$363,890.35.

J. Equisearch Recovery

The Trustee recovered various funds held by Equisearch for the benefit of the Bankruptcy Estate in the amount of \$333,915.87.

II. CASE MANAGEMENT ISSUES

A. Environmental Issues

The Illinois Environmental Protection Agency issued a Seal Order on the Chemetco, Inc. site shortly after the bankruptcy was filed. As a result of the Seal Order, it was necessary for the Trustee to secure the property and limit access to the facility. This requires the Trustee to obtain permission for various creditors to enter the site to recover assets as well as other professionals retained by the Trustee to obtain samples and testing, etc.

B. Professionals

The Trustee retained Penni Livingston to advise the Trustee on environmental matters. The Trustee has also retained the services of ENSR and Hurst-Roche to assist the Trustee in providing technical advice needed for the Interim Order with the Illinois EPA.

C. Records

The Trustee has maintained the records of the Debtor which are required by the Illinois Environmental Protection Agency and the United States Environmental Protection Agency. The majority of the records were kept on a Wang computer system. Due to the fact that the power had been turned off prior to the bankruptcy being filed, it was necessary for the Trustee to retain the services of Wang computer experts to repair the system. The Wang system requires a consistently cool temperature; thus, the Estate must keep the utilities turned on at all times. The Wang system has required on-going upkeep and maintenance.

Chemetco, Inc. had two (2) computer systems that operated its facility. The Wang computer system was used for the commercial side of the business and an IBM computer system was used for the plant side of the facility. This computer system was leased through IBM. The Trustee negotiated a discounted payoff of the computer system from IBM. The prior lease required payments of \$2,322.17 per month. The Trustee had previously negotiated a discount payment of \$500.00 per month to keep the computer system. Both computer systems were necessary for the Avoidance Actions and will be necessary for the claims review process.

D. Personnel

In order to maintain the plant and office facility, it was necessary for the Trustee to hire personnel on behalf of the Bankruptcy Estate. The employees hired have been essential to the Bankruptcy Estate in order to maintain compliance with the Seal Order as well as recover documents needed to address environmental issues, recover assets of the Bankruptcy Estate, and review claims. Initially, the Trustee employed the employees through a service known as Labor Ready; this was because the Trustee did not have worker's compensation insurance for the employees. Ultimately, the Trustee was able to obtain worker's compensation insurance and health insurance to keep the employees. Due to the long history that the employees have had with the Chemetco, Inc. facility, their knowledge of the plant operation, equipment operation, and material composition is invaluable. At the time the bankruptcy was filed, all of the employees had been terminated and the Trustee had absolutely no employees to assist the Trustee in recovering documents and/or plant and office maintenance. The Trustee's office has calculated and paid payroll since the filing of the bankruptcy. The Trustee conducts weekly staff meetings to ensure the progress of the plant and stay apprised of current issues related to the facility.

E. Tax Returns

The Trustee retained accountants and accumulated information to assist in the preparation of the tax returns of the Bankruptcy Estate. Once again, the information was difficult to gather due to the fact that there were no employees at Chemetco, Inc. at the time the

facility was closed. The personnel retained by the Trustee assisted the Trustee in gathering the tax information. The Trustee has filed all tax returns necessary for the Estate to date.

F. Miscellaneous Operating

- (1) Expenses - Each month the Trustee reviews and pays utility bills, uniform bills, security bills, trash collection bills, repair bills, testing and sampling bills, etc. incurred to maintain the plant.
- (2) Claims - The Trustee has organized over 628 claims filed in this case. The Trustee also assisted the Illinois Department of Employment Pension and Welfare Benefits to review records of the Debtor to determine whether a claim would need to be filed. Claim objections are in progress.
- (3) Monthly Reports - The Trustee has provided income and expense reports to the U.S. Trustee's office and reviewed those reports on a regular basis with the U.S. Trustee's office.
- (4) Allocation of Sales Proceeds - the Trustee reviewed numerous records relating to the alleged secured claims of various creditors in this case. The Trustee has negotiated payment of the claims from various assets sold with those secured creditors and has offset against those payments costs of the Bankruptcy Estate so as not to penalize the Bankruptcy Estate for the expenses incurred in those sales.
- (5) Seal Order - The Trustee has continued to provide information to the Illinois Environmental Protection Agency with regard to the Seal Order. The Trustee has also provided additional information to the Illinois EPA related to other matters in which the Illinois EPA is investigating.

6. The Trustee has spent countless hours performing the above-referenced duties. The amount of time the Trustee has spent has increased since the sale to IAD to facilitate the approval of the Consent Decree with the Illinois EPA and U.S. EPA necessary to move forward on the Processing Plant and assorted work plans. The Trustee has also spent many hours trying to coordinate the working relationship between the bankruptcy estate and IAD. The Trustee believes that the process being developed by IAD will provide a substantial benefit to this estate by not only improving the Plant Site but providing a distribution to the creditors. At the time the Trustee took this case, the possibilities for Chemetco, Inc. looked bleak. The Trustee was willing to withstand carefully calculated risks to continually maintain the plant and create the opportunities to process the material. The Trustee was recently appointed to be the next United States Bankruptcy Judge for the Southern District of Illinois. Laura K. Grandy will resign as Trustee prior to assuming the position of United States Bankruptcy Judge. The U.S. Trustee's Office has selected Donald M. Samson to replace Laura K. Grandy as Trustee. Donald M. Samson has spent several days since being notified of his selection to become acquainted with the facilities, liquidation process and administration of the estate. The Trustee was employed by the law firm of Mathis, Marifian, Richter & Grandy, Ltd. the entire time she

acted as Trustee in this bankruptcy estate. As such, the fees earned by Laura K. Grandy are assets of Mathis, Marifian, Richter & Grandy, Ltd. The Trustee and Donald M. Samson have agreed to allocate future trustee applications for fees so that one-third (1/3) of all future fees approved by the Court will be paid to Donald Samson and two-thirds (2/3) will be paid to Mathis, Marifian, Richter & Grandy, Ltd. for the fees earned by Laura K. Grandy but not yet realized due to the fact that the proceeds for said distributions have not yet come to fruition. The Trustee has spent a significant amount of time laying the groundwork in hopes of improving the Plant Site, increasing distribution to creditors, and realizing the future trustee fees. The division of these trustee's fees will in no way cause the Trustees to collectively be paid more than allowed by the Bankruptcy Code or approved by the Bankruptcy Court in the future. The purpose of this Motion is simply to allocate future trustee fees that may be approved by this Court between the current Trustee, Laura K. Grandy, and the future Trustee, Donald M. Samson.

7. Donald M. Samson has agreed to this Motion. The Trustee and Donald M. Samson believe the allocation of the Trustee fees are reasonable considering the substantial amount of time the Trustee has devoted to this case, the risk that certain assets would not sell, the environmental risk, the immediacy of the issues presented to the Trustee, the cost savings methods employed by the Trustee and the potential positive results the Trustee has brought to the Estate by the association with IAD. The IAD process is expected to substantially reduce the claims of the Illinois EPA and the U.S. EPA resulting in the distributions to the remaining creditors being substantially increased. Laura K. Grandy has served as Trustee for approximately eight and one half (8½) years.

WHEREFORE, the Trustee prays that the Court approve this Motion to Allocate Future Trustee Fees as set forth above.

Dated this 9th day of March, 2010.

Mathis, Marifian, Richter & Grandy, Ltd.
23 Public Square, Ste. 300
Belleville, IL 62232
(618) 234-9800
(618) 234-9786

/s/ Laura K. Grandy Trustee



Approved as to form and content:

Laura K. Grandy, Trustee

Donald M. Samson

CERTIFICATE OF SERVICE

I, LAURA K. GRANDY, hereby certify that on this 9th day of March, 2010, I forwarded a copy of the foregoing instrument by U.S. Mail or electronic Mail to Tim Ruppel, Assistant U.S. Trustee, Becker Building, Room 1100, 401 Main Street, Peoria, IL 61602; all parties requesting notification via ECF; and to all creditors set forth on the matrix.

/s/ Laura K. Grandy

F:\WP51\VLKG\TRUSTEE\Chemetco, Inc\Motions\Mot to Allocate Future Ttee Dist.doc